



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
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thru
Friday
8 AM – 4:30 PM

ZONING BOARD OF ADJUSTMENT
MINUTES
SEPTEMBER 3, 2008
(Approved as amended 10/7/08)

PRESENT: Forrest Esenwine; June Purington; Malcolm Wright, Alternate; Neal Kurk, Alternate; Naomi L. Bolton, Land Use Coordinator.

GUESTS: Jeanne Stapleton; James Stapleton; Gene Propper; Brett Merrill; Tim Lorenz; Ginger Esenwine; Robert Mefford; Lorie Mefford; Leonard Mudge; Rob Rook

I. INTRODUCTION:

Due to the absence of Chairman David Ruoff and Vice Chairman Ian McSweeney, Forrest Esenwine being the senior member explained that he will be the acting chairman for the evening. He appointed alternates Neal Kurk and Malcolm Wright to sit as voting members for tonight. Acting Chairman Esenwine called this meeting to order at 8:00 PM and asked the board members present to introduce themselves. Acting Chairman Esenwine explained to those present the way by which the board conducts business.

II. ADMINISTRATIVE ITEMS:

There were no administrative items for this evening and the board went right to the hearings.

III. PUBLIC HEARINGS:

Case #0408 James & Jeanne Stapleton (Continued Hearing)
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to build a single family home.
Tax Map 404-019 Wildwood Road (Private)

James & Jeanne Stapleton were present. The Stapleton's stated that they would like to continue their hearing to next month in hopes of having a full board at that time. Acting Chairman Esenwine made a motion to continue this hearing to October 7, 2008; June Purington seconded the motion, all in favor.

Case #0508 Robert & Lorie Mefford
Variance, Article 3, Section 3.5.1
Applicant is requesting permission to construct a 24' x 24' garage within the setback.
Tax Map 402-063 191 Walker Hill Road

Robert Mefford, Lorie Mefford and Rob Rook were present. The board discussed this corner lot and if it was necessary to have a variance because if the side to which he is looking to encroach is considered a side lot line then there is no need for the variance. The board asked if there was another place that the garage could be placed that would not require a variance. Mr. Mefford responded that there probably is. This chosen location fit the driveway and layout they preferred. After much discussion the board allowed Mr. Mefford to proceed. Mr. Mefford addressed the five points as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: The construction would enhance the value of the property and in doing so enhance the neighborhood property. It would allow for inside storage of equipment/kids toys etc. and improve the appearance of the property.
2. That the granting of the variance will not be contrary to the public interest because: The public interest would not be adversely affected as a garage is a normal accessory structure to a residence. Several garages in the vicinity are located within front yard setback areas.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - aa. An area variance is needed to enable the applicants proposed use of the property given the special conditions of the property because: The existing house is located in the extreme south west corner of the property. The garage would utilize the existing driveway for access and would be near the front entrance to the house. The location of the existing septic system (east) side precludes the garage from being located on that side of the house.
 - bb. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because: The lot is undersized (1.21 Acres vs. 2 Acres currently required) and has frontage on two roads. The primary access (driveway) is located on Walker Hill Road. The existing house is located in the extreme south west corner of the property. The existing driveway is on the left side of the house where the garage would be constructed.
4. That the granting of relief by variance substantial justice will be done because: Granting relief would allow construction of a garage, a normal accessory structure associated with a residential home. Other garages in the area are located with similar setbacks from adjacent roadways.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: A garage associated with a residence is normally found in residential districts.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public at Large: NONE

Other Boards: NONE

Rebuttal: Mr. Mefford stated that the whole purpose of constructing the garage is for storage because the only storage they have in their current house is the crawl space that gets flooded out every time there are heavy rains and he would need it for storage.

Acting Chairman Esenwine closed this hearing at 8:35 PM.

DISCUSSION: The board felt that they had discussed this application enough and moved onto the case decision.

CASE DECISION: Point #1: Acting Chairman Esenwine stated that he felt that he didn't think the garage would diminish the value. Malcolm Wright stated that he thinks it would but a very little amount. June Purington moved to accept point #1; Acting Chairman Esenwine seconded the motion. Vote: 2 in favor (Purington, Esenwine) and 2 opposed (Kurk, Wright), point 1 fails. Point #2: Neal Kurk stated that he believes it is contrary to the public interest. He believes that setbacks are in place for a reason. Acting Chairman Esenwine stated that if it were a regular lot where 50 foot setbacks are required, he might be more inclined to allow some relaxation. Mr. Kurk stated that if it was 1 foot he would be more inclined than 50% he felt was too much. June Purington moved to accept point #2; Malcolm Wright seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine), point 2 fails. Point #3aa: Acting Chairman Esenwine stated this is the issue he was caught up on. There are other locations that this garage could go and that is his reason for opposing this request. Neal Kurk moved to accept point #3aa; Malcolm Wright seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine), motion fails. Point #3bb: Acting Chairman Esenwine stated that he felt the board pretty well covered this point in the opening discussion and the applicant indicated that he probably has other options. Vote: Acting Chairman Esenwine moved to accept point #3bb; June Purington seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine). Point #4: Acting Chairman Esenwine stated that substantial justice will not be done because it is not as if there is something unique with that lot that needs to have this variance to be allowed to build. June Purington moved to accept point #4; Malcolm Wright seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine), motion fails. Point #5: Acting Chairman Esenwine stated that he thinks most definitely is contrary of the ordinance as a garage can be placed in other locations without this variance. June Purington moved to accept point #5; Malcolm Wright seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine).

Acting Chairman Esenwine stated that in order to receive a variance according to the state statute all five (5) points must be met and if not the variance can not be granted. Acting Chairman Esenwine moved that the variance for 0508 be granted; Malcolm Wright seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine) therefore the variance is denied. Acting Chairman Esenwine explained that there is an appeal period but there are probably other places that this could be placed without coming back to the board.

Case #0608 Leonard Mudge
Special Exception, Article 19, Section 19.1.10
Equitable Waiver of Dimensional Requirement
Variance, Article 18, Section 18.2.3
Applicant is requesting permission to construct an in-law apartment
attached to the existing house which is currently in the side setback.
Tax Map 403-143 55 Sherwood Forest Road

Naomi explained to the board present that she helped Mr. Mudge fill out the applications. The only thing they are looking for is an in-law apartment, but when looking at the surveyed certified plot plan, the existing house, in which the apartment has to be attached to, is less than 3 feet from the side property line. Naomi indicated that she had Mr. Mudge fill out the variance paperwork and the equitable waiver paperwork so that he would be covered for everything. The board looked at the plans for Mr. Mudge's in-law apartment. While looking at the plans and trying to gather information as to whether or not a variance or an equitable waiver of dimension would be needed, it was determined that Mr. Mudge could accomplish the in-law apartment by moving the building forward enough to get out of the setback and work. Mr. Mudge agreed with the board's conclusion so therefore only a special exception will be needed. Mr. Mudge then proceeded through the seven conditions needed for a special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development. I want to build an in-law apartment for my wife and me. My daughter and her family would purchase the house and we would live in the apartment.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: I can't see where this in-law apartment will adversely affect the neighborhood or the real estate values.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: The residents will park in the current driveway with no changes to the entrance to the street. The same number of people and vehicles are and will be the same as today. There is actually going to be a reduction of residents then in years past.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: I don't see how this proposal would cause an undue burden on the Town through basic Town services. The same number of people will be living in the house, just spread out a little. No additional services will be needed.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: For this purpose there should not need any reasons for on-street parking. There is adequate off-street parking.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence, screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: The existing trees and woods will be a sufficient buffer and the design of the in-law apartment will blend perfectly with the current structure.

7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: The purpose of this proposal is not for rental to non-family member, but just a way for our family to live for the long term.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public at Large: NONE
Other Boards: NONE

Neal Kurk asked how the in-law apartment is handled with regard to rental. The board felt that the real issue in all of these in-law apartments is enforcement.

Neal Kurk moved to grant the special exception as requested with the conditions:

1. The accessory attached apartment may only be used by relatives of the owner and not for any rental purposes
2. The addition must be moved in a northerly position by 8' 9" so that there is a minimum of 25 feet from the property line.

June Purington seconded the motion. Discussion: None. Vote: 4 in favor (Kurk, Purington, Wright and Esenwine) and 0 opposed.

Variance and Equitable Waiver of Dimensional Requirement: Mr. Mudge has agreed to move the addition out of the setback so that both the variance and equitable waiver are not needed. So Mr. Mudge is formally withdrawing those two applications.

Acting Chairman Esenwine moved to accept the withdrawal for the variance and equitable waiver as requested by Mr. Mudge; Neal Kurk seconded the motion. Vote: all in favor.

Acting Chairman Esenwine closed this hearing at 9:15 PM.

IV: OTHER BUSINESS:

AUGUST 5, 2008 MINUTES: Acting Chairman Esenwine moved to accept the August 5, 2008 minutes as amended; June Purington seconded the motion, all in favor.

CASE #3605 – VARIANCE EXTENSION REQUESTED CONCERNING LOT 404-087: Harry Wetherbee just purchased this lot and realized the variance was expired, so he has requested an extension. The board discussed this and said that the zoning article states that the extension must be applied for before the expiration; therefore they felt Mr. Wetherbee will need to re-apply for a variance. Acting Chairman Esenwine moved to grant the extension with the knowledge that the variance has expired as of December 8, 2007; Neal Kurk seconded the motion. Vote: 0 in favor and 4 opposed (Kurk, Purington, Wright and Esenwine).

V. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn the meeting at 9:25 PM; Malcolm Wright seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator